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IN THE MATTER OF QWEST
CORPORATION'S
APPLICATION FOR ARBITRATION
PROCEDURE AND APPROVAL OF
INTERCONNECTION AGREEMENT
WITH HANDY PAGE, AND PURSUANT
TO SECTION 252(B) OF THE
COMMUNICATIONS ACT OF 1932, AS
AMENDED BY THE
TELECOMMUNICATIONS ACT OF
1996, AND THE APPLICABLE STATE
LAWS.

DOCKET NO. T-01051B-06-0175
DOCKET NO. T-02556A-06-0175
DOCKET NO. T-03693A-06-0175

INTERSTATE WIRELESS, INC D/b/a
HANDY PAGE'S REQUEST FOR
REHEARING

Request for Rehearing of the October 17, 2006 Order of the Arizona Corporation
Commission, Decision No. 68993, in Docket No. T-01051B-06-0175 *et. al.*

INTERSTATE WIRELESS, INC. D/b/a HANDY PAGE' S
REQUEST FOR REHEARING OF ACC DECISION NO. 68993

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**This Request for Rehearing is filed in conformance with Arizona Revised Statutes, Title 40,
Chapter 2, Article 3, Section 40-253.**

1 **Summary**

2 The ACC Order's statement that, "Wide Area Calling is not a telecommunications service
3 subject to arbitration under Section 251(b) of the Act," failed to resolve Handy Page's
4 Complaints regarding Qwest charges for Wide Area Calling ("WAC") billed to Handy Page,
5 failed to address unresolved issues in Qwest's proposed Interconnection Agreement and raised
6 but failed to dispose of the issue of unlawful carriage of "toll" traffic by Qwest.
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10 **Unlawful Qwest Charges for Intra-MTA Traffic**

11 A determination by the ACC that WAC is not a telecommunications service subject to
12 arbitration under Section 251(b) of the Act¹, does not in any way diminish or resolve Handy
13 Page's original complaint and dispute regarding charges Qwest has made to Handy Page for so-
14 called WAC services. The Qwest intra-MTA charges at issue in this proceeding are being billed
15 under a tariff but without an "arrangement" (agreement) as required by FCC rules. The October
16 6, 2006 release of the FCC's Mountain Communications, Inc. v. Qwest Communications
17 International, Inc., Memorandum Opinion and Order on Remand (FCC 06-147) ("Mountain
18 Order") reiterated that Qwest cannot assess WAC charges on a CMRS carrier such as Handy
19 Page without a specific "arrangement" (agreement) for an intra-MTA WAC arrangement.² The
20 Mountain Order states, "... we conclude, consistent with the D.C. Circuit's reasoning, that
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24 ¹ Communications Act of 1934 {CITE}

25 ² "The record demonstrates that Qwest charged Mountain a fee for delivering one-way paging traffic that
26 originated and terminated in the same MTA.² And, as the D.C. Circuit noted, Mountain did not enter into a wide
27 area calling arrangement with Qwest that might have permitted Qwest to charge for the traffic at issue.² Absent
28 such an arrangement, we conclude, consistent with the D.C. Circuit's reasoning, that Qwest's charges for
transporting one-way paging telecommunications traffic to Mountain from Qwest's own customers are unlawful." Mountain v Qwest, FCC 06-147, released 10/06/06, Paragraph 9.

1 Qwest's charges for transporting one-way paging telecommunications traffic to Mountain from
2 Qwest's own customers are unlawful." During the time in which the issues for Handy Page's
3 case were being briefed and decided upon, neither the ACC nor its staff had the benefit of this
4 highly relevant and probative case-on-point. Once the ACC is able to reconsider the facts of this
5 case against this recent case law from the FCC, Handy Page is confident it will prevail on the
6 merits.
7

8 According to the holding in the Mountain Order, without an arrangement (agreement) for
9 WAC services, all Qwest originated intra-MTA traffic is subject to the FCC's reciprocal
10 compensation rules. The record in this proceeding has not produced any claim, evidence or
11 statement whatsoever that Qwest has an "arrangement" (agreement) of any kind with Handy
12 Page regarding the so-called WAC traffic for which it is billing Handy Page. Qwest's billing for
13 the intra-MTA traffic to Handy Page has been made entirely and solely under an Arizona Qwest
14 tariff, and is therefore unlawful by FCC rules and not germane to the ACC's Order. Qwest may
15 claim³ that Handy Page "ordered" the WAC tariff service, but an "order" for a tariff service does
16 not constitute an "arrangement" according to the FCC's Mountain Order. The ACC failed to
17 note this significant fact in its Order. Under the circumstances as described above, the intra-
18 MTA traffic Qwest is sending to Handy Page is not covered by any arrangement or agreement,
19 and therefore the disputed charges are clearly unlawful.
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23 In the TSR Wireless Order⁴ at paragraph 31, the FCC noted that paging providers such as
24 Handy Page and LEC's such as Qwest could, "...decide to enter into wide area calling or
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26 ³ Handy Page has been unable to ascertain if such a "claim" has been made to date by Qwest.
27

28 ⁴ See FCC 00-194, *TSR Wireless vs Qwest, et al.* Released June 21, 2000.

reverse billing arrangements...”⁵ However, in the Mountain Order of October 6, 2006, the FCC concluded, based on a remand from the U.S. Court of Appeals for the District of Columbia,⁶ that the paging carrier must enter into a wide area calling “arrangement” with the LEC, otherwise, as the FCC noted in paragraph 1 of the Mountain Order, “we find that Qwest violated sections 51.703(b) and 51.709(b) of our rules⁷ by improperly charging Mountain for delivering one-way paging traffic that originated and terminated in the same Major Trading Area (“MTA”) and for which no wide area calling arrangement had been established.”

Specifically, the ACC’s statement at paragraph 29 of the Order that “Qwest’s offering by way of its tariff is appropriate” is not applicable to the so-called WAC traffic sent to Handy Page by Qwest. Additionally, Qwest’s statement in the record⁸ concerning the application of its Arizona WAC tariff to the Handy Page calls is invalid according to the Mountain Order. Taken together with Handy Page’s prior arguments in the ACC proceeding, the FCC’s Mountain Order served to confirm that the Qwest tariff charges for WAC are invalid in this particular instance

⁵ “Should paging providers and LECs decide to enter into wide area calling or reverse billing arrangements, nothing in the Commission’s rules prohibits a LEC from charging the paging carrier for those services.” (TSR Wireless Order at paragraph 31.)

⁶ See *On Petition for Review of an Order of the Federal Communications Commission* United States Court of Appeals for the District of Columbia Circuit, No. 02-1255, *MOUNTAIN COMMUNICATIONS, INC., PETITIONER v. FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA, RESPONDENTS, T-MOBILE USA, INC., ET AL., INTERVENORS*; Decided January 16, 2004

⁷ 47 C.F.R. §§ 51.703(b) (prohibiting a LEC from assessing charges on another carrier for telecommunications traffic that originates on the LEC’s own network), 51.709(b) (“The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers’ networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier’s network.”).

⁸ “The WAC tariff that TSR challenged in 2000, and which Handy Page challenges on the same grounds, is the same tariff, and is the same offering.” Qwest Reply Brief at page 3.

1 and, absent an "arrangement" (agreement) between the carriers, the so-called WAC intra-MTA
 2 traffic is subject to reciprocal compensation.
 3

4
 5 **The Staffs Assertion Regarding WAC Traffic is Not Valid in the Absence of an**
 6 **"Arrangement" for such Services.**

7 The Staff asserted, and the ACC relied upon in the Order at paragraph 22, *"that this [that*
 8 *FCC rule 51.703(b) did not prohibit Qwest from charging for WAC] essentially means that WAC*
 9 *is not a cost related to LEC originating traffic."* (emphasis added) However in light of the
 10 Mountain Order, this Staff assertion is not valid in the absence of an affirmative "arrangement"
 11 (agreement) for WAC services between Qwest and Handy Page. As noted previously, an
 12 "arrangement" or (agreement) is required in order for WAC traffic to be considered "not
 13 necessary for interconnection" for two reasons. First, The FCC's Mountain Order requires an
 14 "arrangement" (agreement) for so-called Wide Area Calling traffic to not fall under the FCC's
 15 51.703(b) reciprocal compensation rules. Additionally, the FCC's T-Mobile Order⁹ prohibits
 16 tariff charges for any traffic subject to reciprocal compensation; "We amend our rules to make
 17 clear our preference for contractual arrangements by prohibiting LECs from imposing
 18 compensation obligations for non-access CMRS traffic pursuant to tariff."¹⁰
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23 **Remaining Non-WAC Disputes to be Arbitrated.**

24 The ACC's Order's statements at paragraphs 28 and 30 that there are no more "remaining
 25 issues" in this arbitration is untrue and not based on the record in this proceeding. As noted in
 26

27 ⁹ See, *T-Mobile, etc. Petition for Declaratory Ruling FCC 05-42*, released February 24, 2005 ("T-Mobile Order").

28 ¹⁰ See, T-Mobile Order at ¶xx

1 the Order at paragraph 23, the ACC statement, "However, because Handy Page and Qwest
2 appear to have agreed on all issues..." is contrary to the record in this proceeding.¹¹ Handy
3 Page, in fact, does have several unresolved issues, unrelated to WAC, with Qwest's proposed
4 interconnection agreement, including the "transit traffic" charges for facilities and the amount of
5 reciprocal compensation offered in the agreement. Because the record in this proceeding has
6 indisputably shown that there is no "transit" traffic being sent from Qwest to Handy Page under
7 the current interconnection,¹² the fixed transit traffic percentage (21.1%) in the Qwest proposed
8 agreement is neither logical nor reasonable, and should be set at zero percent unless and until it is
9 established that there is transit traffic being sent over the facilities here at issue and a
10 determination made as to the amount of such transit traffic traversing the facilities.
11

12
13 With respect to the issue of compensation for the termination of traffic, it has been
14 established in the record, and Qwest has agreed, that Qwest is responsible for paying
15 compensation to Handy Page for termination of all Qwest originated call traffic. However,
16 Qwest has proposed in its Interconnection Template Agreement a level of compensation that
17 fails to come close to adequately compensating Handy Page for the facilities it uses to terminate
18 Qwest originated call traffic, as called for under Section 252 of the Act. The offered
19 compensation is based in neither fact nor logic, and is ripe for arbitration.
20
21

22 As noted herein and in the record, the ACC's Order failed to address all of the disputed
23 issues that Handy Page brought to this arbitration proceeding. Toll Carriage Issue Created by the
24 ACC's Order
25

26 ¹¹ See, *INTERSTATE WIRELESS, INC d/b/a HANDY PAGE'S Exceptions to the Recommendation of the*
27 *Administrative Law Judge* at page 12.

28 ¹² See *INTERSTATE WIRELESS, INC d/b/a HANDY PAGE'S Exceptions to the Recommendation of the*
Administrative Law Judge at page 12

1 The ACC Order itself has raised an important issue, an impossible contradiction, that
2 must now be resolved. As pointed out in these proceedings by Handy Page, Qwest is unlawfully
3 carrying WAC "toll" calls.¹³ The ACC found in paragraph 28, "We find that Handy Page's
4 arguments that no "toll" calls exist between Qwest and Handy Page's interconnection is erroneous." This
5 finding creates a significant dilemma for the ACC because, as noted in the record of this proceeding,
6 if the so-called WAC traffic is "toll" traffic, as determined by the ACC, then Qwest is unlawfully
7 transporting at least some of that "toll" traffic in violation of FCC rules regarding Qwest
8 subscriber Preferred Inter-exchange Carrier (PIC) choices.¹⁴ Additionally, Qwest's claims that
9 the WAC charges are to "buy down" the cost of such "toll" calls to make it appear to end users
10 that they have made a local call rather than a toll call are patently untrue. Any Qwest subscribers
11 that have an intra-LATA PIC that is a carrier other than Qwest, would not be paying Qwest for
12 the WAC "toll" call, and thus Qwest's charges to Handy Page as a "buy down" for such calls
13 constitute an unlawful recovery of a non-existent cost. In the least, Qwest is depriving inter-
14 exchange carriers ("IXC") of their rightful business and revenues.

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18 Qwest is not authorized by FCC rules to charge for services or traffic it is unlawfully
19 providing or transporting, whether the result of the ACC's erroneous determination or not. More
20 to the point, the determination by the ACC that the so-called WAC calls are "toll" calls is not in
21 accordance with the facts as presented in the record in this case.¹⁵ Handy Page has shown in
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25 ¹³ See INTERSTATE WIRELESS, INC d/b/a HANDY PAGE'S *Reply to the Qwest Corporation Opening Brief and the Staff's Statement* at page 8 and footnotes 19 and 20.

26 ¹⁴ See INTERSTATE WIRELESS, INC d/b/a HANDY PAGE'S *Reply to the Qwest Corporation Opening Brief and the Staff's Statement* at page 3

27 ¹⁵ See, INTERSTATE WIRELESS, INC d/b/a HANDY PAGE'S *Exceptions to the Recommendation of the Administrative Law Judge*, page 9 and INTERSTATE WIRELESS, INC d/b/a HANDY PAGE'S *Reply to the Qwest Corporation Opening Brief and the Staff's Statement* at page 5.

1 several instances in this proceeding that the so-called WAC calls are dialed as 7 digit "local"
2 calls and therefore cannot be "toll" calls.¹⁶ Although Wide Area Calling has been ruled by this
3 Commission to not be a telecommunications service subject to arbitration under Section 251(b)
4 of the Act, the ACC determination in this Order does not alter the fact that the calls are dialed as
5 7 digit calls and are therefore "local" calls and not "toll" calls with respect to FCC rules. The
6 *established fact* that the WAC calls are dialed as 7 digit, "local" calls has not been disputed by
7 any party to this proceeding, including Qwest.
8

9
10 Based on the facts as listed above, the ACC should reconsider it's determination that
11 "Wide Area Calling is not a telecommunications service subject to arbitration under Section
12 251(b) of the Act."
13

14 **The ACC Order Failed to Distinguish Between *Intra*-MTA and *Inter*-MTA Calling and its**
15 **Designation of Inter-MTA Calling as Subject to a "Tariffed Billing Service" is Unlawful.**
16

17 It has not been disputed that inter-MTA (non-local/access) calls to CMRS carriers such as
18 Handy Page are not subject to reciprocal compensation and such calls *do* fall under the FCC's
19 Access Charge rules. However, intra-MTA (local/non-access) call traffic, originated by a LEC
20 such as Qwest, and delivered to a CMRS carrier such as Handy Page, *is* subject to the FCC's
21 reciprocal compensation rules absent any "arrangement" (agreement) for Wide Area Calling.
22 The ACC's Order did not distinguish between WAC traffic that is inter-MTA versus WAC
23 traffic that is intra-MTA. In essence, the ACC has declared that all WAC traffic, including inter-
24
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26 ¹⁶ See September 1, 2006 INTERSTATE WIRELESS, INC d/b/a HANDY PAGE'S *Reply to the Qwest Corporation*
27 *Opening Brief and the Staff's Statement*, Pages 3 and 4 and INTERSTATE WIRELESS, INC d/b/a HANDY
28 *PAGE'S Exceptions to the Recommendation of the Administrative Law Judge* at page 8.

1 MTA WAC traffic constitutes "... a tariffed billing service unnecessary for interconnection, and
2 is therefore not a telecommunications service subject to arbitration under Section 251(b) of the
3 Act." Since inter-MTA traffic falls under the FCC's Access rules, the designation of such traffic
4 as being subject to a "tariffed billing service" is unlawful.
5

6 The undeniable conundrums created by the ACC's inconsistent ruling must be addressed
7 right away for they threaten to unravel the entire interconnection regime in the State of Arizona
8 with respect to the obvious and inevitable chaos that will ensue as carriers are forced to decide
9 which of several conflicting laws each will follow.
10

11
12 **Request for Rehearing.**

13 The ACC Order's conclusions regarding the classification of Wide Area Calling, and its
14 conclusions with respect to other disputed issues in this arbitration are not in conformance with
15 FCC rules and Orders and are contrary to the facts as given in the briefs and arguments on the
16 record in this proceeding. Additionally, and more importantly, the issue of the validity of
17 Qwest's tariff charges for so-called WAC traffic sent to Handy Page was not settled in
18 accordance with Section 251(b) of the Act or the FCC's rules. The ACC's conclusion, "Under
19 the applicable law and rules, WAC is a tariffed billing service unnecessary for interconnection,
20 and is therefore not a telecommunications service subject to arbitration under Section 251(b) of
21 the Act", is not germane to the disputed issues in this docket, is inconsistent with applicable FCC
22 rules and violates the Act.
23

24
25 Handy Page respectfully requests a rehearing and reconsideration of the ACC's Order,
26 Decision No. 68993, and a revision of the conclusions provided therein for all of the reasons
27 listed above.
28

INTERSTATE WIRELESS, INC. D/b/a HANDY PAGE' S
REQUEST FOR REHEARING OF ACC DECISION NO. 68993

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3 DATED this 6th day of November 2006.
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